

U.S. Department of Justice



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 15, 2007

BY FEDERAL EXPRESS AND BY FACSIMILE (WITHOUT ENCL.)

ALL COUNSEL ON ATTACHED LIST

Re: **United States v. Aleksander Lipkin, et al.**
06 Cr. 1179 (RJH)

Dear Counsel:

This letter provides discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."), and seeks reciprocal discovery.

Disclosure By the Government

Based on your discovery requests, the Government is providing the following initial discovery:

A. Search Warrants: The following search warrant materials are available to be ordered through JAGG Management/RedRose Document Solutions, 52-08 Grand Avenue, Maspeth, New York, 11378, phone (718) 381-8560, fax (718) 381-8563, maintained under the purchase order # 65253 and case title U.S. v. Lipkin:

1. Search Warrants and Affidavit in Support of Search Warrants for the following premises: (1) AGA Capital, 2713 Coney Island Avenue, 3d Floor, Brooklyn, New York; (2) Rigonda Financial, 1719 East 12th Street, 3d Floor, Brooklyn, New York; (3) AGA Capital, 2729 Coney Island Avenue, 1st Floor, 16 Mott Street, Third Floor, New York, New York; and (4) Law Office of Alex Rozenaft, 293 Avenue S, Brooklyn, New York (Bates # APP 1-57);

B. Pen Register and Wiretap Applications, Orders, and Periodic Reports: The following wiretap materials are available to be ordered through JAGG Management/RedRose Document Solutions,

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52-08 Grand Avenue, Maspeth, New York, 11378, phone (718) 381-8560, fax (718) 381-8563, maintained under the purchase order # 65253 and case title U.S. v. Lipkin:

1. March 15, 2006 and May 16, 2006 Applications and Orders authorizing the installation and use of a pen register on cellular telephone number (917) 628-4994 (Bates # APP 58-69);
2. July 21, 2006 Application and Order authorizing the installation and use of a pen register on cellular telephone number (917) 589-7000 (Bates # APP 70-76);
3. July 11, 2006 and September 14, 2006 Applications and Orders authorizing the installation and use of a pen register for on cellular telephone line (347) 247-2899 (Bates # APP 77-90);
4. May 26, 2006 materials with respect to interception of wire communications over the telephone assigned call number (917) 628-4994:
 - a. Application and Affidavit (Bates # APP 91-131)
 - b. Order to Agents (Bates # APP 132-139)
 - c. Order to Cingular Wireless (Bates # APP 140-143)
 - d. Minimization instructions (Bates # APP 144-163)
 - e. First periodic report (Bates # APP 164-171)
 - f. Second periodic report (Bates # APP 172-182)
 - g. Sealing Order (Bates # APP 183-184)
5. June 26, 2006 materials with respect to interception of wire communications over the telephone assigned call number (917) 628-4994:
 - a. Application and Affidavit (Bates # APP 185-236)
 - b. Order to Agents (Bates # APP 237-244)
 - c. Order to Cingular Wireless (Bates # App 245-248)
 - d. First periodic report (Bates # App 249-254)
 - e. Second periodic report (Bates # App 255-260)
 - f. Final Periodic report (Bates # App 261-0265)
 - g. Sealing Order (Bates # App 266-267)

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6. August 18, 2006 materials with respect to interception of wire communications over the telephone assigned call number (917) 589-7000
 - a. Application and Affidavit (Bates # APP 268-322)
 - b. Order to Agents (Bates # APP 323-330)
 - c. Order to Verizon wireless (Bates # APP 331-334)
 - d. Minimization instructions (Bates # APP 335-354)
 - e. First periodic report (Bates # APP 355-360)
 - f. Second periodic report (Bates # APP 361-366)
 - g. Sealing Order (Bates # APP 367-368)
7. September 20, 2006 materials with respect to interception of wire communications over the telephone assigned call (917) 589-7000
 - a. Application and Affidavit (Bates # APP 369-427)
 - b. Order to Agents (Bates # APP 428-435)
 - c. Order to Verizon Wireless (Bates # APP 436-439)
 - d. First periodic report (Bates # APP 440-446)
 - e. Second periodic report (Bates # APP 447-453)
 - f. Final periodic report (Bates # APP 454-458)
 - g. Sealing Order (Bates # APP 459-460)
8. November 9, 2006 materials with respect to interception of wire communications over the telephone assigned call (347) 247-2899:
 - a. Application and Affidavit (Bates # APP 461-531)
 - b. Order to Agents (Bates # APP 532-539)
 - c. Order to Verizon Wireless (Bates # APP 540-543)
 - d. Minimization instructions (Bates # APP 544-563)
 - e. First periodic report (Bates # APP 564-570)
 - g. Second periodic report (Bates # APP 571-576)
 - h. Final periodic report (Bates # APP 577-582)
 - i. Sealing Order (Bates # APP 583-584)

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C. Wiretap CDs: Also available for your copying at JAGG Management/RedRose Document Solutions, (718) 381-8560, maintained under the purchase order # 65253 and case title U.S. v. Lipkin, are 15 CDs containing (1) audio conversations, and (2) linesheets of conversations, for telephone conversations intercepted over the following cellular telephones pursuant to court-authorized wiretaps:

1. (917) 628-4994
(7 CDs of conversations, 1 CD of linesheets);
2. (917) 589-7000
(3 CDs of conversations, 1 CD of linesheets);
3. (347) 247-2899
(2 CDs of conversations, 1 CD of linesheets)

Each CD of audio recordings contains numerous sub-folders identified by a session number (reflecting call numbers, which are frequently referred to in the wiretap application materials and periodic reports). Within each sub-folder is the individual intercepted conversation in the form of a .Wav file, which is playable on Windows Media Player or Realplayer. In addition, one CD for each telephone contains a file in .pdf format, which contains the linesheets and pen register data reflecting basic information regarding the calls, such as duration and number identification.

All of the transcripts and linesheets are drafts which are being produced pursuant to a draft transcript stipulation. A blank draft transcript stipulation is enclosed. Please fax a copy of the draft transcript stipulation to the Government, c/o Paralegal Specialist Jane Gorbacheva, fax # (212) 637-0097. If you have any objection to the enclosed transcript stipulation, please advise us immediately before ordering the CDs from JAGG Management/RedRose Document Solutions. Moreover, if you have any questions about these materials please contact one of the undersigned Assistant United States Attorneys.

D. Lender files: Also available for your copying at JAGG Management/RedRose Document Solutions, (718) 381-8560, maintained under the purchase order # 65253 and case title U.S. v. Lipkin, are materials from loan files related to the following properties:

1. 184 Willowbrook Rd, Staten Island, NY
(Bates # LF 1-309);
2. 3135 Gunter Avenue, Bronx, NY
(Bates # LF 310-649);

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3. 1058 Decatur Street, Brooklyn, NY
(Bates # LF 650-952);
4. 1244 Lincoln Place Brooklyn, NY
(Bates # LF 953-1304);
5. 105 Oceana Drive, Apt. 1D, Brooklyn, NY
(Bates # LF 1305-1793);
6. 123 Powell Street, Brooklyn, NY
(Bates # LF 1794-2419);
7. 1370 Park Place Brooklyn, NY
(Bates # LF 2420-2657);
8. 225-19 113th Ave, Queens Village, NY
(Bates # LF 2658-3299);
9. 8 Pleasant Place Brooklyn, NY
(Bates # LF 3300-4215);
10. 330 Old Tacy Road, Sullivan County, NY
(Bates # LF 4216-4525, 5579-5800);
11. 243 W. 98th Street, Apt. 5E, New York, NY
(Bates # LF 4526-4787);
12. 243 W. 98th Street, Apt. 3A, New York, NY
(Bates # LF 4789-4937);
13. 243 W. 98th Street, Apt. 6E, New York, NY
(Bates # LF 4938-5165);
14. 100 Oceana Drive, Apt 3E, Brooklyn, NY
(Bates # LF 5166-5578);
15. 221 Washington Avenue, Brooklyn, NY
(Bates # LF 5801-6237);
16. 40 Oceana Drive West, Apt. 1D, Brooklyn, NY
(Bates # LF 6238-6789);
17. 41 York Avenue, Staten Island, NY
(Bates # LF 6790-7084);
18. 1919 Pacific Street, Brooklyn, NY
(Bates # LF 7085-8327)

Furthermore, the Government has voluminous records obtained pursuant to pen registers. If you wish to examine any of these materials in their entirety or in part, please contact any of the undersigned Assistant United States Attorneys and one of us will make arrangements for you to do so. Once any individual counsel has had the opportunity to review these materials, and wishes to obtain copies, we will make arrangements for the copying of any and all such items desired.

Additional discovery will be provided on a rolling basis.

As you know, counsel for both prosecution and defense have an obligation to bring to the Court's attention any actual or potential conflicts of interest that might be posed by your

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representation of your client in this matter. Please advise us immediately if you (or your firm, or a firm or office with which you were previously associated) has ever represented any other defendant in this case or any witness so that we can schedule proceedings pursuant to United States v. Curcio, 680 F.2d 881 (2d Cir. 1982), if necessary.

The Government recognizes its obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny. To date, the Government is unaware of any Brady material regarding your client, but will provide timely disclosure if any such material comes to light. The Government will provide Giglio material, if any, at the time it provides prior statements of witnesses pursuant to Title 18, United States Code, Section 3500.

Disclosure By the Defendant

In light of your request for the foregoing discovery, the Government hereby requests reciprocal discovery under Fed. R. Crim. P. 16(b). Specifically, we request that you allow inspection and copying of: (1) any books, or copies or portions thereof, which are in the defendant's possession, custody or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial; and (2) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, which are in the defendant's possession or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial or which were prepared by a witness whom the defendant intends to call at trial.

The Government also requests that the defendant disclose prior statements of witnesses s/he will call to testify. See Fed. R. Crim. P. 26.2; United States v. Nobles, 422 U.S. 225 (1975). We request that such material be provided on the same basis upon which we agree to supply the defendant with 3500 material relating to Government witnesses.

We wish to remind you that Fed. R. Crim. P. 12.2 requires you to provide the Government with written notice if the defendant intends to rely on the defense of insanity at the time of the alleged crime or intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offenses charged.

We also wish to remind you that Fed. R. Crim. P. 12.3(a) requires you to provide the Government with written notice if the defendant intends to claim a defense of actual or

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believed exercise of public authority on behalf of a law enforcement or Federal intelligence agency at the time of the alleged crime.

The Government requests a response to our Rule 12.2 and 12.3 demands within the time period allowed by the Court for the filing of motions.

Sentence Reduction for Acceptance of Responsibility

This Office will oppose the additional one-point reduction under the Sentencing Guidelines available for defendants who plead prior to the Government's initiation of trial preparations, U.S.S.G. § 3E1.1(b)(2), in the event your client has not entered a plea of guilty six weeks prior to trial. We will follow this policy whether or not suppression or other pretrial motions remain outstanding after this date and even if the trial date has not been announced by the Court six weeks in advance of the trial.

Please also be advised that unless a disposition is reached on a timely basis prior to trial, this Office reserves the right to oppose the two-point reduction under the Sentencing Guidelines for acceptance of responsibility based upon its untimeliness. U.S.S.G. § 3E.1(a), Appl. Note 1.(g).


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Please contact any of us at your earliest convenience concerning the possible disposition of this matter or any further discovery that you may request.

Very truly yours,

MICHAEL J. GARCIA
United States Attorney
Southern District of New York

By:



Jonathan B. New
Katherine R. Goldstein
Assistant United States Attorneys
(212) 637-1049/2641

Encl.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

STIPULATION

- v -

:

06 Cr. 1179 (RJH)

ALEKSANDER LIPKIN, *et al.*, :

Defendants. :

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IT IS HEREBY STIPULATED AND AGREED by and between the United States of America, by Michael J. Garcia, United States Attorney, Jonathan B. New, and Katherine R. Goldstein, Assistant United States Attorneys, and defendant _____, by his/her counsel, _____ Esq., that the linesheets and transcripts of (1) oral interceptions recorded over the following cellular telephone numbers (A) (917) 628-4994 ; (B) (917) 589-7000; and (C) (347) 247-2899; and (2) consensually-recorded conversations (collectively, the "Draft Transcripts,") are drafts that are being provided for the convenience of the defendant and defense counsel, and that they will be used only for the purposes of trial preparation and for no other purpose;

IT IS FURTHER STIPULATED AND AGREED that the Draft Transcripts will not be used at any proceeding to conduct cross-examination of any witness or to impeach or call into question the accuracy of any final transcript;

IT IS FURTHER STIPULATED AND AGREED that counsel will not show or give the Draft Transcripts to another attorney; and

IT IS FURTHER STIPULATED AND AGREED that if current counsel is

relieved as counsel for the defendant, the Draft Transcripts will be returned to the Government unless replacement counsel re-executes this Agreement.

Dated: New York, New York
February 15, 2007

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York

By: 

Jonathan B. New
Katherine R. Goldstein
Assistant United States Attorneys

Attorney Signature

Print name of Attorney

Attorney for _____

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